

# **IDAHO CODE**

CONTAINING THE

## **GENERAL LAWS OF IDAHO**

### **ANNOTATED**

---

ORIGINALLY PUBLISHED BY AUTHORITY OF  
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF  
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the  
Idaho Code Commission

THOMAS A. MILLER  
RICHARD GOODSON R. DANIEL BOWEN  
COMMISSIONERS

MAX M. SHEILS, JR.  
EXECUTIVE SECRETARY

---

**TITLES 1 TO 13**

# **MICHIE**

LexisNexis and the knowledge burst logo are registered trademarks, and MICHIE is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

---

© 2004 Matthew Bender & Company, Inc.  
All rights reserved.

---

4221612

ISBN 0-820-58881-4

## PUBLISHER'S NOTE

Since the publication in 1998 of Replacement Titles 1 through 13, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for Titles 1 through 13 has made it necessary to revise this volume. Accordingly, Replacement Titles 1 through 13 are issued with the approval and under the direction of the Idaho Code Commission.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, court decisions are now being read as they are released by the courts. A consequence of this more current reading of cases, as they are posted on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of March 25, 2004. These cases will be printed in the following reports:

Pacific Reporter, 3rd Series  
Federal Supplement, 2nd Series  
Federal Reporter, 3rd Series  
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Additionally, annotations have been taken from the following sources:

American Law Reports, 5th Series, through Volume 113  
American Law Reports, Federal Series, through Volume 189  
Opinions of Attorney General, 2002-2

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at [customer.support@bender.com](mailto:customer.support@bender.com).

Visit our website at <http://www.lexisnexis.com> for an online bookstore, technical support, customer service, and other company information.

LexisNexis  
Attn: Customer Service  
1275 Broadway  
Albany, NY 12204-2694

available witness as defined by subsection (a)(2) and the admission of his preliminary hearing testimony was error. *State v. Barcella*, 135 Idaho 191, 16 P.3d 288 (Ct. App. 2000).

while not set forth specifically as required by I.R.E. 103(a)(1), appeared to be under this section, and the trial court's ruling therefore would not be disturbed unless clearly erroneous. *State v. Cross*, 132 Idaho 667, 978 P.2d 227 (1999).

**Standard of Review.**

The basis of defendant's objection to the admission of preliminary hearing testimony,

**9-337. Definitions.** — As used in sections 9-337 through 9-347, Idaho Code:

(1) "Copy" means transcribing by handwriting, photocopying, duplicating machine and reproducing by any other means so long as the public record is not altered or damaged.

(2) "Custodian" means the person having personal custody and control of the public records in question. If no such designation is made by the public agency or independent public body corporate and politic, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

(3) "Independent public body corporate and politic" means the Idaho housing and finance association as created in chapter 62, title 67, Idaho Code.

(4) "Inspect" means the right to listen, view and make notes of public records as long as the public record is not altered or damaged.

(5) "Investigatory record" means information with respect to an identifiable person, group of persons or entities compiled by a public agency or independent public body corporate and politic pursuant to its statutory authority in the course of investigating a specific act, omission, failure to act, or other conduct over which the public agency or independent public body corporate and politic has regulatory authority or law enforcement authority.

(6) "Law enforcement agency" means any state or local agency given law enforcement powers or which has authority to investigate, enforce, prosecute or punish violations of state or federal criminal statutes, ordinances or regulations.

(7) "Local agency" means a county, city, school district, municipal corporation, district, public health district, political subdivision, or any agency thereof, or any committee of a local agency, or any combination thereof.

(8) "Person" means any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.

(9) "Prisoner" means a person who has been convicted of a crime and is either incarcerated or on parole for that crime or who is being held in custody for trial or sentencing.

[(10)](9) "Public agency" means any state or local agency as defined in this section.

[(11)](10) "Public official" means any state, county, local district, independent public body corporate and politic or governmental official or employee, whether elected, appointed or hired.

[(12)](11) "Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

[(13)](12) "State agency" means every state officer, department, division, bureau, commission and board or any committee of a state agency including those in the legislative or judicial branch, except the state militia.

[(14)](13) "Writing" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents. [I.C., § 9-337, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 1, p. 1146; am. 2000, ch. 368, § 1, p. 1219.]

**Compiler's notes.** This section was amended by two 2000 acts — ch. 342, § 1, and ch. 368, § 1, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment by ch. 342, § 1, inserted "or independent public body corporate and politic" once in subsections (2) and (10) and twice in subsection (5); added subsection (3); redesignated subsections (4) through (12) as (5) through (13) (now [(14)](13)); in subsection (5) inserted "over" following "or other conduct", and deleted "over" at the end.

The 2000 amendment by ch. 368, § 1, added subsection (8); and redesignated subsections (9) through (12) as (10) through (13) (now [(11)](10) through [(14)](13)).

The bracketed subsection designations [(10)] through [(14)] were inserted by the compiler.

Section 2 of S.L. 2000, ch. 368 is compiled as § 9-342.

**Sec. to sec. ref.** This section is referred to in §§ 9-340B, 9-343, 40-1306C, 65-301 and 67-5241.

Sections 9-337 — 9-347 are referred to in §§ 9-343, 67-5711C and 67-5711D.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Cited in:** *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

#### **Classification.**

Because a member of a city council is a local governmental official, not an employee, and

the exemption from disclosure of § 9-340(36) (now repealed) did not apply to an applicant for appointment as a local governmental official, the name and resume of an applicant to be appointed to a city council are not exempt from disclosure; city was required to disclose names and resumes of applicants for city council to publisher requesting records. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996).

**Opinions of Attorney General.** The Department of Health and Welfare has the authority to investigate reports of suspected child abuse, abandonment and neglect; such authority to investigate extends to school facilities; such investigation should proceed in accordance with governing statutes, the department's promulgated rules, and internal policies. OAG 93-2.

Public records that are exempt from public disclosure are nevertheless subject to disclosure in a judicial or administrative proceeding if they are subject to disclosure under the laws or rules of evidence and discovery governing those proceedings. OAG 95-6.

A document's lack of availability under the Public Records Act is not a valid basis to refuse to honor an administrative subpoena. OAG 95-6.

#### **DECISIONS UNDER PRIOR LAW**

#### **List of Certain Taxpayers.**

The legislature intended the definition of "public records," as used in former law, to be broad enough to include a list of names ob-

tained by an agency in the normal course of carrying out its duties; in addition, the language of this section clearly evidenced an intent by the legislature to create a very

broad scope of government records and information accessible to the public. Thus, a list of names of dairy product producers who paid the taxes levied by § 25-3117, which list was compiled by the Idaho Dairy Products Com-

mission, fell within the purview of such former section as "public records and other matters," and was subject to inspection by a private citizen. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

**9-338. Public records — Right to examine.** — (1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) The custodian shall make no inquiry of any person who applies for a public record, except to verify the identity of a person requesting a record in accordance with section 9-342, Idaho Code, to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 9-348, Idaho Code, or as otherwise provided by law. The person may be required to make a written request and provide their name, a mailing address and telephone number. [The custodian shall make no inquiry of any person who applies for a public record, except that the person may be required to make a written request and provide a mailing address and telephone number, and except as required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law.]

(5) The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted under this act.

(6) Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined.

(7) Examination of public records under the authority of this section must be conducted during regular office or working hours unless the custodian shall authorize examination of records in other than regular office or working hours. In this event, the persons designated to represent the custodian during such examination shall be entitled to reasonable compensation to be paid to them by the public agency or independent public body corporate and politic having custody of such records, out of funds provided in advance by the person examining such records, at other than regular office or working hours.

(8)(a) A public agency or independent public body corporate and politic or public official may establish a copying fee schedule. The fee may not

exceed the actual cost to the agency of copying the record if another fee is not otherwise provided by law. The actual cost shall not include any administrative or labor costs resulting from locating and providing a copy of the public record; provided however, that a public agency or independent public body corporate and politic or public official may establish a fee to recover the actual labor cost associated with locating and copying documents if:

- (i) The request is for more than one hundred (100) pages of paper records; or
  - (ii) The request includes records from which nonpublic information must be deleted; or
  - (iii) The actual labor associated with locating and copying documents for a request exceeds two (2) person hours.
- (b) For providing a duplicate of a computer tape, computer disc, microfilm or similar or analogous record system containing public record information, a public agency or independent public body corporate and politic or public official may charge a fee, uniform to all persons that does not exceed the sum of the following:
- (i) The agency's direct cost of copying the information in that form;
  - (ii) The standard cost, if any, for selling the same information in the form of a publication.

The custodian may require advance payment of the cost of copying. Any money received by the public agency or independent public body corporate and politic shall be credited to the account for which the expense being reimbursed was or will be charged, and such funds may be expended by the agency as part of its appropriation from that fund.

(c) The public agency or independent public body corporate and politic may not charge any cost or fee for copies or labor when the requester demonstrates either:

- (i) The inability to pay; or
- (ii) That the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

(9) A public agency or independent public body corporate and politic shall not prevent the examination or copying of a public record by contracting with a nongovernmental body to perform any of its duties or functions.

(10) Nothing contained herein shall prevent a public agency or independent public body corporate and politic from disclosing statistical information that is not descriptive of an identifiable person or persons. [I.C., § 9-338, as added by 1990, ch. 213, § 1, p. 480; am. 1997, ch. 80, § 1, p. 165; am. 1997, ch. 152, § 1, p. 432; am. 2000, ch. 342, § 2, p. 1146.]

**Compiler's notes.** This section was amended by two 1997 acts — ch. 80, § 1, effective September 13, 1997 and ch. 152, § 1, effective July 1, 1997, which appear to be compatible. Even though the amendments by ch. 80 and ch. 152 appear to be compatible, subsection (4) no longer seemed to make sense when the amendments made by both

ch. 80, § 1 and ch. 152, § 1 to subsection (4) were combined. Therefore, the subsection has been set out twice, once as amended by ch. 152, § 1 and in brackets as amended by ch. 80, § 1.

The amendment by ch. 80, § 1 as contained in brackets in subsection (4) added all that part of the sentence beginning with “, and



except as required for purposes."

The amendment by ch. 152, § 1 in subsection (4) in the first sentence deleted "that" following "applies for a public record, except," added all that part of the first sentence beginning with "to verify the identity" and ending with "provided by law," and substituted "The" for "the" creating the second sentence.

Section 2 of S.L. 1997 ch. 152 is compiled as § 9-348.

Section 2 of S.L. 1997, ch. 80, an amendment to § 9-340, is contained in § 9-340n and § 3 is compiled as § 49-105.

Section 13 of S.L. 1997, ch. 80 provided that the act should be in full force and effect on and after September 13, 1997.

**Sec. to sec. ref.** This section is referred to in §§ 18-3302, 63-3045B and 67-1902.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Cited in:** *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

#### ANALYSIS

Administrative review.

Physical handling of document.

Private photocopying of records.

"Raw notes" from board meetings.

#### Administrative Review.

Because of the presumption of this section that all public records are open unless expressly otherwise, since the administrative review of a shooting incident involving Boise police officers prepared by a police lieutenant was not a personnel record, personnel information, or a personnel evaluation, and because all of the information that would have constituted an invasion of the officers' privacy under § 9-335 was contained in the investigation report which had been disclosed pursuant to a court order, the administrative review was not exempt from disclosure; city

was required to disclose administrative review upon request of publisher. *Federated Publications, Inc. v. Boise City*, 128 Idaho 459, 915 P.2d 21 (1996).

#### Physical Handling of Document.

Even if the public is entitled to know the contents of a document when it has been filed, this entitlement does not necessarily extend to the physical handling of the document; to allow physical handling of an original document before it becomes an official record upon microfilming would carry a potential for abuse, because if the document were altered or damaged, the public record would be affected; moreover, private rights or obligations could be put in doubt if an original document were altered or damaged after it was microfilmed but before it was returned to the proper party. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### Private Photocopying of Records.

Title company's desire to avoid increases in fees charged by the recorder does not outweigh the recorder's duty to protect the safety of documents entrusted to his care, nor does it diminish the recorder's power to control the orderly function of his office, and accordingly the recorder cannot be compelled to allow private photocopying of public records in the courthouse. *Adams County Abstract Co. v. Fisk*, 117 Idaho 513, 788 P.2d 1336 (Ct. App. 1990).

#### "Raw Notes" from Board Meetings.

Trial court erred in holding that as a matter of law "raw notes" ("handwritten notes," "raw minutes") taken by Clerk of the Board of County Commissioners during meetings of the County Board of Commissioners, could not be public writings. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).

#### DECISIONS UNDER PRIOR LAW

#### Disclosure Mandatory.

Because § 9-301 (now repealed) and former section providing for the inspection of public records by private citizens were mandatory, there were no exceptions to the rule of disclosure and the courts could not apply a balancing test to determine whether or not to allow disclosure. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

The Idaho Dairy Products Commission's duty, power and authority to take such action as the Commission deemed necessary or advisable in order to stabilize and protect the

dairy industry of the state and the health and welfare of the public was clearly limited by the legislature's express statutory language in former section mandating that the public records and other matters be open to the inspection of the public; accordingly the Commission's list of dairy product producers, who paid the taxes levied by § 25-3117 to dairy product dealers, was subject to disclosure even though the dealer gave the names of the producers to the Commission in confidence. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

#### 9-339. Response to request for examination of public records. —

(1) A public agency or independent public body corporate and politic shall

either grant or deny a person's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. If it is determined by employees of the public agency or independent public body corporate and politic that a longer period of time is needed to locate or retrieve the public records, the public agency or independent public body corporate and politic shall so notify in writing the person requesting to examine or copy the records and shall provide the public records to the person no later than ten (10) working days following the person's request.

(2) If the public agency or independent public body corporate and politic fails to respond, the request shall be deemed to be denied within ten (10) working days following the request.

(3) If the public agency or independent public body corporate and politic denies the person's request for examination or copying the public records or denies in part and grants in part the person's request for examination and copying of the public records, the person legally responsible for administering the public agency or independent public body corporate and politic or that person's designee shall notify the person in writing of the denial or partial denial of the request for the public record.

(4) The notice of denial or partial denial shall state that the attorney for the public agency or independent public body corporate and politic has reviewed the request or shall state that the public agency or independent public body corporate and politic has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so. [I.C., § 9-339, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 3, p. 1146.]

**Compiler's notes.** Section 4 of S.L. 2000, ch. 342 is compiled as § 9-340B.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Sec. to sec. ref.** This section is referred to in § 9-342A.

#### **9-340. Records exempt from disclosure. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 9-340, as added by 1997, ch. 60, § 2, p. 111; am. 1998, ch. 164, § 1, p. 552; am. 1998, ch. 262, § 1, p. 865; am. 1998, ch. 293,

§ 1, p. 968; am. 1998, ch. 308, § 1, p. 1012; am. 1998, ch. 411, § 4, p. 1275, was repealed by S.L. 1999, ch. 30, § 1, p. 41, effective July 1, 1999.

**9-340A. Records exempt from disclosure — Exemptions in federal or state law — Court files of judicial proceedings. —** The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court,

but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition. [I.C., § 9-340A, as added by 1999, ch. 30, § 2, p. 41.]

**Sec. to sec. ref.** This section is referred to in § 48-1509.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Cited in:** *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

**9-340B. Records exempt from disclosure — Law enforcement records, investigatory records of agencies, evacuation and emergency response plans, worker's compensation.** — The following records are exempt from disclosure:

(1) Investigatory records of a law enforcement agency, as defined in section 9-337(6), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(2) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(3) Records of the custody review board of the Idaho department of juvenile corrections, including records containing the names, addresses and written statements of victims and family members of juveniles, shall be exempt from public disclosure pursuant to section 20-533A, Idaho Code.

(4)(a) The following records of the department of correction:

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

(ii) Records that contain any identifying information, or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(9), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(b) Records of buildings, facilities, infrastructures and systems held by or in the custody of any public agency only when the disclosure of such information would jeopardize the safety of persons or the public safety. Such records may include emergency evacuation, escape or other emergency response plans, vulnerability assessments, operation and security manuals, plans, blueprints or security codes. For purposes of this section "system" shall mean electrical, heating, ventilation, air conditioning and telecommunication systems.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(5) Voting records of the sexual offender classification board. In accordance with section 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(6) Records of the sheriff or Idaho state police received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(7) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(8) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(9) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(10) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

- (b) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or
  - (c) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or
  - (d) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction; or
  - (e) Although a claimant's records maintained by the industrial commission, including medical and rehabilitation records, are otherwise exempt from public disclosure, the quoting or discussing of medical or rehabilitation records contained in the industrial commission's records during a hearing for compensation or in a written decision issued by the industrial commission shall be permitted; provided further, the true identification of the parties shall not be exempt from public disclosure in any written decision issued and released to the public by the industrial commission.
- (11) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.
- (12) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.
- (13) Records furnished or obtained pursuant to section 41-1019, Idaho Code, regarding termination of an appointment, employment, contract or other insurance business relationship between an insurer and a producer.
- (14) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.
- (15) Except as provided in section 72-1007, Idaho Code, records of the Idaho industrial commission relating to compensation for crime victims under chapter 10, title 72, Idaho Code. [I.C., § 9-340B, as added by 1999, ch. 30, § 3, p. 41; am. 1999, ch. 249, § 3, p. 638; am. 1999, ch. 308, § 1, p. 765; am. 2000, ch. 57, § 1, p. 120; am. 2000, ch. 342, § 4, p. 1146; am. 2000, ch. 367, § 1, p. 1216; am. 2000, ch. 469, § 19, p. 1450; am. 2001, ch. 48, § 1, p. 88; am. 2001, ch. 180, § 1, p. 606; am. 2001, ch. 296, § 1, p. 1044; am. 2002, ch. 62, § 1, p. 132; am. 2002, ch. 136, § 1, p. 371; am. 2003, ch. 164, § 1, p. 462; am. 2004, ch. 378, § 1, p. 1135.]

**Compiler's notes.** This section was enacted by S.L. 1999, ch. 30, § 3, effective July 1, 1999, and also amended by two 1999 acts, ch. 249, § 3, and ch. 308, § 1, both effective

July 1, 1999, which do not conflict and have been compiled together.

The amendment by ch. 249 added subsection (11).

The amendment by ch. 308 added subdivision (3)(b).

This section was amended by four 2000 acts — ch. 57, § 1, ch. 342, § 4, ch. 367, § 1 and ch. 469, § 19, all effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment by ch. 57, § 1, in the first sentence of subdivision (3)(b), inserted “and security” following “Operation”, inserted “plans or codes” preceding “of county jails”, and inserted “and buildings owned or leased by Idaho state government, a county or a city”; in the second sentence of subdivision (3)(b), inserted “state government agency” following “documents of any”, and inserted “or city building or” preceding “jail that define”, inserted “building or” preceding “jail”, and added the last sentence in subdivision (3)(b).

The 2000 amendment by ch. 342, § 4, substituted “9-337(6)” for “9-337(5)” in subdivision (1).

The 2000 amendment by ch. 367, § 1, in the first sentence of subdivision (3)(a), added “Until July 1, 2001” at the beginning, made a minor stylistic change, deleted “or the commission of pardons and parole” following “department of correction” near the beginning, deleted “or on parole” following “the department of correction” near the middle, and deleted “or the commission of pardons and parole” preceding “if the public interest”; and added subdivision (3)(c).

The 2000 amendment by ch. 469, § 19, substituted “Idaho state police” for “department of law enforcement” in subdivisions (5) and (11).

This section was amended by three 2001 acts which appear to be compatible and have been compiled together.

The amendment by ch. 48, § 1, added subsection [13](12).

The amendment by ch. 180, § 1, rewrote

subsection (3)(a) and added subsections (3)(a)(i) through (3)(a)(v); inserted “, visitors or prisoners” in subsection (b).

The amendment by ch. 296, § 1, added subsection (12).

This section was amended by two 2002 acts — ch. 62, § 1 and ch. 136, § 1, both effective July 1, 2002, which appear to be compatible and have been compiled together.

The 2002 amendment by ch. 62 inserted “evacuation and emergency response plans” in the section heading and rewrote subdivision (3)(b).

The 2002 amendment by ch. 136 added subdivision (14).

Sections 2 and 4 of S.L. 1999, ch. 249 are compiled as §§ 67-3001 through 67-3011 and 18-8306, respectively.

Section 3 of S.L. 2000, ch. 342 is compiled as § 9-339.

Section 18 of S.L. 2000, ch. 469 is compiled as § 9-335.

Section 2 of S.L. 2001, ch. 48 is compiled as § 9-342.

Section 2 of S.L. 2002, ch. 136 is compiled as § 72-1003.

Section 2 of S.L. 2003, ch. 164 is compiled as § 20-533A.

Section 2 of S.L. 2000, ch. 57 provided that the act shall be in full force and effect on and after July 1, 2000.

**Sec. to sec. ref.** This section is referred to in § 44-1606.

#### **Construction With Other Law.**

Section 9-342(3) limits the applicability of § 9-342(1) by excluding “otherwise exempt investigatory records if the investigation is ongoing,” which implicitly defers to the exemption contained in this section; this section, in turn, defers to § 9-335 for a more specific definition of the investigatory records exemption. *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

**9-340C. Records exempt from disclosure — Personnel records, personal information, health records, professional discipline.** — The following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official’s public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee’s or applicant’s written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(2) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(3) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(4) Records of a personal nature as follows:

- (a) Records of personal debt filed with a public agency or independent public body corporate and politic pursuant to law;
- (b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;
- (c) Records of ownership of financial obligations and instruments of a public agency or independent public body corporate and politic, such as bonds, compiled by the public agency or independent public body corporate and politic pursuant to law;
- (d) Records, with regard to the ownership of, or security interests in, registered public obligations;
- (e) Vital statistics records; and
- (f) Military records as described in and pursuant to section 65-301, Idaho Code.

(5) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(6) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency or independent public body corporate and politic pursuant to a statutory requirement for licensing, certification, permit or bonding.

(9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Complaints received by the board of medicine and investigations and informal proceedings, including informal proceedings of any committee of the board of medicine, pursuant to chapter 18, title 54, Idaho Code, and rules adopted thereunder.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient, prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) Records of the Idaho state police or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure



as public records as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(19) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

(20) Records of the Idaho housing and finance association (IHFA) relating to the following:

- (a) Records containing personal financial, family, health or similar personal information submitted to or otherwise obtained by the IHFA;
- (b) Records submitted to or otherwise obtained by the IHFA with regard to obtaining and servicing mortgage loans and all records relating to the review, approval or rejection by the IHFA of said loans;
- (c) Mortgage portfolio loan documents;
- (d) Records of a current or former employee other than the employee's duration of employment with the association, position held and location of employment. This exemption from disclosure does not include the contracts of employment or any remuneration, including reimbursement of expenses, of the executive director, executive officers or commissioners of the association. All other personnel information relating to an association employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence, retirement plan information and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. An employee or authorized representative may inspect and copy that employee's personnel records, except for material used to screen and test for employment or material not subject to disclosure elsewhere in the Idaho public records act.

(21) Records of the department of health and welfare related to child support services in cases in which there is reasonable evidence of domestic violence, as defined in chapter 63, title 39, Idaho Code, that can be used to locate any individuals in the child support case except in response to a court order.

(22) Records of the Idaho state bar lawyer's assistance program pursuant to chapter 49, title 54, Idaho Code, unless a participant in the program authorizes the release pursuant to subsection (4) of section 54-4901, Idaho Code.

(23) Records and information contained in the trauma registry created by chapter 20, title 57, Idaho Code, together with any reports, analyses and compilations created from such information and records.

(24) Records contained in the court files, or other records prepared as part of proceedings for judicial authorization of sterilization procedures pursuant to chapter 39, title 39, Idaho Code.

(25) The physical voter registration card on file in the county clerk's office; however, a redacted copy of said card shall be made available consistent with the requirements of this section. Information from the voter registration card maintained in the statewide voter registration database, including age, will be made available except for the voter's driver's license number, date of birth and, upon showing of good cause by the voter to the county clerk in consultation with the county prosecuting attorney, the physical residence address of the voter. For the purposes of this subsection good cause shall include the protection of life and property and protection of victims of domestic violence and similar crimes. [I.C., § 9-340C, as added by 1999, ch. 30, § 4, p. 41; am. 1999, ch. 347, § 2, p. 926; am. 1999, ch. 395, § 3, p. 1095; am. 2000, ch. 58, § 1, p. 122; am. 2000, ch. 189, § 3, p. 465; am. 2000, ch. 194, § 2, p. 479; am. 2000, ch. 294, § 1, p. 1011; am. 2000, ch. 332, § 6, p. 1112; am. 2000, ch. 342, § 5, p. 1146; am. 2000, ch. 469, § 20, p. 1450; am. 2002, ch. 329, § 3, p. 928; am. 2002, ch. 363, § 2, p. 1023; am. 2003, ch. 16, § 1, p. 48; am. 2003, ch. 26, § 2, p. 95; am. 2003, ch. 189, § 3, p. 511; am. 2004, ch. 163, § 1, p. 529.]

**Compiler's notes.** Former § 9-340C, which comprised I.C., § 6-311B, as added by 1974, ch. 308, § 6, p. 1803, was repealed by S.L. 1996, ch. 169, § 2.

This section was enacted by S.L. 1999, ch. 30, § 4, effective July 1, 1999 which was then amended by two 1999 acts, ch. 347, § 2, and ch. 395, § 3, both effective July 1, 1999, which do not conflict and have been compiled together.

The amendment by ch. 347 added present subsection (19).

The amendment by ch. 395 in subsection (10), substituted "chapters 10 and 23" for "chapter 10"; and added subsection (18).

This section was amended by seven 2000 acts — ch. 58, § 1, effective July 1, 2000, ch. 189, § 3, effective July 1, 2000, ch. 194, § 2, effective April 4, 2000, ch. 294, § 1, effective July 1, 2000, ch. 332, § 6, effective July 1, 2000, ch. 342, § 5, effective July 1, 2000, and ch. 469, § 20, effective July 1, 2000, which contained a minor conflict that has been resolved by the Code Commission and have been compiled together.

The 2000 amendment by ch. 58, § 1, in subdivision (18), substituted "as soon as the facility in question has received the report, and no later than" for "on and after"; and redesignated former subdivision [19](18) as present subdivision (19).

The 2000 amendment by ch. 189, § 3, in subdivision (13), inserted "including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient," preceding "records of psychiatric care"; and redesignated former subdivision [19](18) as present subdivision (19).

The 2000 amendment by ch. 194, § 2, in

subdivision (13), inserted "prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code," preceding "records of psychiatric care or treatment"; and redesignated former subdivision [19](18) as present subdivision (19); and made minor stylistic changes.

The 2000 amendment by ch. 294, § 1 redesignated former subdivision [19](18) as present subdivision (19); and added subdivision (20) (now [(21)](20)); and made minor stylistic changes.

The 2000 amendment by ch. 332, § 6, rewrote subdivision (11) which formerly read: "Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code."; and redesignated former subdivision [19](18) as present subdivision (19); and made minor stylistic changes.

The 2000 amendment by ch. 342, § 5, in subdivision (4)(a), inserted "or independent public body corporate and politic" preceding "pursuant to law"; in subdivision (4)(c), inserted "or independent public body corporate and politic" preceding "such as bonds"; inserted "or independent public body corporate and politic" preceding "pursuant to law"; in subdivision (8), inserted "or independent public body corporate and politic" preceding "pursuant to a statutory"; redesignated former subdivision [19](18) as present subdivision (19); and added subdivision (20); and made minor stylistic changes.

The 2000 amendment by ch. 469, § 20, in subdivision (17), substituted "Idaho state police" for "department of law enforcement"; and redesignated former subdivision [19](18) as present subdivision (19).

This section was amended by three 2003

acts — ch. 16, § 1, effective February 12, 2003, ch. 26, § 2, effective July 1, 2003, and ch. 189, § 3, effective July 1, 2003 — which do not conflict and have been compiled together.

The 2003 amendment by ch. 16, § 1, substituted “section 54-4901” for “section 54-4801” in subsection (22), and renumbered the following subsection to (23).

The 2003 amendment by ch. 26, § 2, added subsection (4)(f), substituted “section 54-4901” for “section 54-4801” in subsection (22), and renumbered the following subsection to (23).

The 2003 amendment by ch. 189, § 3, substituted “section 54-4901” for “section 54-4801” in subsection (22), renumbered the following subsection to (23), and added subsection (24).

Sections 1 and 3 of S.L. 1999, ch. 347 are compiled as §§ 39-4803 and 39-4804, respectively.

Section 2 of S.L. 1999, ch. 395 is compiled as § 54-1604.

Sections 1 and 3 of S.L. 2000, ch. 194 are compiled as §§ 37-2730A and 9-340G, respectively.

Section 5 of S.L. 2000, ch. 332 is compiled as § 54-1841.

Section 21 of S.L. 2000, ch. 469 is compiled as § 18-915.

Section 2 of S.L. 2002, ch. 329 is compiled as §§ 57-2001—57-2007.

Section 1 of S.L. 2002, ch. 363 is compiled as §§ 54-4901, 54-4902.

Section 1 of S.L. 2003, ch. 26 is compiled as § 65-301.

Section 2 of S.L. 2003, ch. 189 is compiled as §§ 39-3901 — 39-3915.

Section 2 of S.L. 2004, ch 163 is compiled as § 34-416.

Section 7 of S.L. 2000, ch. 332, provides: “This act shall be in full force and effect on and after July 1, 2000, and the Board of Medicine is directed to begin rulemaking pursuant to Chapter 52, Title 67, Idaho Code, as required by Section 54-1806(2), Idaho Code. Until such rules are final, the Idaho Rules of Administrative Procedure of the Attorney General to the extent they are not inconsistent with rules already adopted by the Board of Medicine, shall be the rules of practice and procedure for the Board of Medicine.”

Section 4 of S.L. 2002, ch. 329 provides: “This act shall be in full force and effect on and after January 1, 2003, provided that for purposes of promulgation of rules as provided in section 57-2003, Idaho Code, this act shall be in full force and effect on and after July 1, 2002.”

Section 5 of S.L. 2002, ch. 329 provides: “The provisions of this act shall be null, void and of no force and effect on and after January 1, 2008.”

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

**Sec. to sec. ref.** This section is referred to in §§ 34-416, 54-1413, 56-209j and 59-1316.

Sections 9-335 through 9-348 are referred to in § 63-3077.

#### **Discloseable Information.**

The names of public employees of a hospital were not exempt from disclosure to an inquiring newspaper when those names were connected with information regarding the employees' gross salary, were obtainable from public records, and did not constitute an invasion of privacy. *Magic Valley Newspapers, Inc. v. Magic Valley Reg'l Med. Ctr.*, 138 Idaho 143, 59 P.3d 314 (2002).

**9-340D. Records exempt from disclosure — Trade secrets, production records, appraisals, bids, proprietary information.** — The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. “Trade secrets” as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(2) Production records, housing production, rental and financing records, sale or purchase records, catch records, mortgage portfolio loan documents,

or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency or submitted to or otherwise obtained by an independent public body corporate and politic. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(3) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency or independent public body corporate and politic.

(4) Any estimate prepared by a public agency or independent public body corporate and politic that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(5) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency or independent public body corporate and politic responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(6) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(7) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(8) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(9) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(10) Information obtained from books, records and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

(11) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency or independent public body corporate and politic.

(12) Records of laboratory test results provided by or retained by the Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(13) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(14) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(15) Computer programs developed or purchased by or for any public agency or independent public body corporate and politic for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

- (a) The original data including, but not limited to, numbers, text, voice, graphics and images;
- (b) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or
- (c) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(16) Active investigative records and trademark usage audits of the Idaho potato commission specifically relating to the enforcement of chapter 12, title 22, Idaho Code, until the commencement of formal proceedings as provided by rules of the commission; purchase and sales information submitted to the Idaho potato commission during a trademark usage audit, and investigation or enforcement proceedings. Inactive investigatory records shall be disclosed unless the disclosure would violate the standards set forth in subsections (1)(a) through (f) of section 9-335, Idaho Code. Nothing in this subsection shall limit the use which can be made, or

availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(17) All records copied or obtained by the director of the department of agriculture or his designee as a result of an inspection pursuant to section 25-3806, Idaho Code, except:

(a) Records otherwise deemed to be public records not exempt from disclosure pursuant to this chapter; and

(b) Inspection reports, determinations of compliance or noncompliance and all other records created by the director or his designee pursuant to section 25-3806, Idaho Code.

(18) All data and information collected by the division of animal industries or the state brand board pursuant to the provisions of section 25-207B, Idaho Code, or rules promulgated thereunder.

[(19)](18) Records disclosed to a county official by the state tax commission pursuant to subsection (4)(c) of section 63-3029B, Idaho Code. [I.C., § 9-340D, as added by 1999, ch. 30, § 5, p. 41; am. 2000, ch. 342, § 6, p. 1146; am. 2001, ch. 383, § 2, p. 1340; am. 2004, ch. 204, § 2, p. 621; am. 2004, ch. 205, § 2, p. 627.]

**Compiler's notes.** This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment by ch. 204, § 2 added subsection [(19)].

The 2004 amendment by ch. 205, § 2 added subsection (18).

Section 9-803 referred to in subdivision (14) became null and void December 31, 1997. The previous text of that section is set out as follows:

**"9-803. Definitions. [Null and void December 31, 1997.]** — As used in this chapter:

"(1) 'Document,' as used in this legislation, includes writings, drawings, graphs, charts, photographs, phone records and other data compilations, including electronic, from which information can be obtained or translated.

"(2) 'Environmental agency' shall mean any department or division of the state, local government or health board with authority to enforce any state environmental law.

"(3) 'Environmental audit' means an internal evaluation done pursuant to a plan or protocol that is designed to identify and prevent noncompliance and to improve compliance with statutes, regulations, permits and orders. An environmental audit may be conducted by an owner or operator, by an owner or operator's employees or by an independent contractor. An environmental audit may include:

"(a) One (1) or more facilities;

"(b) Any activity at one (1) or more facilities;

"(c) Impacts on one (1) or more environmental media at a facility or facilities; or

"(d) Management systems related to a fa-

cility, an activity or an impact on environmental media.

"(4) 'Environmental audit report' means a set of documents, each labeled 'Environmental Audit Report' (or a substantive equivalent label), and prepared as a result of an environmental audit. An environmental audit report may include field notes, records of observations, findings, opinions, suggestions, implementation plans, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, data, charts, graphs and surveys, provided such supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report may include memoranda and documents analyzing portions or all of the audit report.

"(5) 'Environmental law' means any federal, state or local law, regulation, rule, ordinance or permit terms and conditions designed to protect or enhance the quality of land, water or air for the protection of human health, wildlife, other biota, or the environment.

"(6) 'Person' means any individual, firm, association, partnership, joint stock company, trust, estate, local governmental entity, public or private corporation, or any other legal entity which is recognized by the law as the subject of rights and duties, but does not include any state or federal governmental entity or its contractors and/or subcontractors in the performance, operation or management of governmental activities, programs, functions, facilities or sites.

"(7) 'In camera review' means a hearing or review in a courtroom, hearing room or cham-

bers, to which the general public is not admitted. After such hearing or review, the content of the oral and other evidence and statements of the judge, hearing officer and counsel shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record until or unless its contents are disclosed by a court having jurisdiction over the matter. [I.C., § 9-803, as added by 1995, ch. 359, § 1, p. 1218; am. 1996, ch. 414, § 1, p. 1376.]”

Section 7 of S.L. 2000, ch. 342 is compiled as § 9-341.

Section 1 of S.L. 2001, ch. 383 is compiled as §§ 25-3801 — 25-3808.

Section 1 of S.L. 2004, ch 204 is compiled as § 63-3029B.

Section 1 of S.L. 2004, ch 205 is compiled as § 25-207B.

Section 3 of S.L. 2004, ch. 204 declared an emergency retroactively to January 1, 2003. Approved March 23, 2004.

**Sec. to sec. ref.** This section is referred to in §§ 22-606, 22-609, 22-2206, 22-2209, 22-2718, 25-207B and 63-3029B.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-340E. Exemptions from disclosure — Archaeological, endangered species, libraries, licensing exams.** — The following records are exempt from disclosure:

(1) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(2) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(3) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(4) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(5) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected. [I.C., § 9-340E, as added by 1999, ch. 30, § 6, p. 41.]

**Sec. to sec. ref.** Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-340F. Records exempt from disclosure — Draft legislation and supporting materials, tax commission, petroleum clean water trust fund.** — The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or

research agrees to waive the provisions of confidentiality provided by this subsection.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(5) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912 or 41-4912A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937 or 41-4938, Idaho Code. [I.C., § 9-340F, as added by 1999, ch. 30, § 7, p. 41; am. 2000, ch. 229, § 1, p. 643; am. 2001, ch. 103, § 1, p. 253; am. 2003, ch. 96, § 1, p. 281.]

**Compiler's notes.** Section 8 of S.L. 1999, ch. 30 is compiled as § 16-1623.

Section 2 of S.L. 2001, ch. 103 is compiled as § 9-342A.

Section 2 of S.L. 2003, ch. 96 is compiled as § 41-4903.

**Sec. to sec. ref.** Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-340G. Exemption from disclosure — Records of court proceedings regarding judicial authorization of abortion procedures for minors.** — In accordance with section 18-609A, Idaho Code, the following records are exempt from public disclosure: records contained in court files of judicial proceedings regarding judicial authorization of a minor's consent to an abortion or the performance of abortion procedures upon a minor who would otherwise have to obtain consent for the procedure from a parent or guardian, in addition to records of any judicial proceedings filed under section 18-609A(3), Idaho Code. [I.C., § 9-340G, as added by 2000, ch. 7, § 9, p. 10.]



**Compiler's notes.** Section 8 of S.L. 2000, ch. 7 is compiled as § 18-615.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Sec. to sec. ref.** This section is referred to in § 18-609A.

**9-340H. Exemption from disclosure — Records related to the uniform securities act. [Effective September 1, 2004.]** — Except as otherwise determined by the director of the department of finance pursuant to section 30-14-607(c), Idaho Code, the following records are exempt from disclosure:

(1) A record obtained or created by the director of the department of finance or a representative of the director in connection with an audit or inspection under section 30-14-411(d), Idaho Code, or an investigation under section 30-14-602, Idaho Code;

(2) A part of a record filed in connection with a registration statement under section 30-14-301, Idaho Code, and sections 30-14-303 through 30-14-305, Idaho Code, or a record under section 30-14-411(d), Idaho Code, that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) A record that is not required to be provided to the director of the department of finance or filed under chapter 14, title 30, Idaho Code, and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) A nonpublic record received from a person specified in section 30-14-608(a), Idaho Code; and

(5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed pursuant to chapter 14, title 30, Idaho Code. [I.C., § 9-340H, as added by 2004, ch. 45, § 3, p. 169.]

**Compiler's notes.** A former section, which comprised I.C. § [9-340H] 9-340G, as added by 2000, ch. 194, § 3, p. 483, was repealed by S.L. 2002, ch. 27, § 1.

Section 2 of S.L. 2004, ch. 45 is compiled as

chapter 14, title 30, Idaho Code. Section 4 of S.L. 2004, ch. 45 is compiled as § 18-7803.

Pursuant to S.L. 2004, ch. 45, § 8, this section takes effect on September 1, 2004.

**9-341. Exempt and nonexempt public records to be separated. —** If any public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public agency or independent public body corporate and politic shall, upon receipt of a request for disclosure, separate the exempt and nonexempt material and make the nonexempt material available for examination, provided that a denial of a request to copy nonexempt material in a public record shall not be based upon the fact that such nonexempt material is contained in the same public record as the exempt material. [I.C., § 9-341, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 7, p. 1146.]

**Compiler's notes.** Section 6 of S.L. 2000, ch. 342 is compiled as § 9-340D.

**Sec. to sec. ref.** Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-342. Access to records about a person by a person.** — (1) A person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) A person may request in writing an amendment of any record pertaining to that person. Within ten (10) days of the receipt of the request, the public agency or independent public body corporate and politic shall either:

(a) Make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or

(b) Inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as those set forth in sections 9-343 and 9-344, Idaho Code, and the court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review:

(a) Otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing;

(b) Information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable;

(c) The information relates to adoption records;

(d) Information which is otherwise exempt from disclosure by statute or court rule;

(e) Records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole. [I.C., § 9-342, as added by 1990, ch. 213, § 1, p. 480; am. 1992, ch. 200, § 2, p. 618; am. 2000, ch. 342, § 8, p. 1146; am. 2000, ch. 368, § 2, p. 1219; am. 2001, ch. 48, § 2, p. 88.]

**Compiler's notes.** This section was amended by two 2000 acts — ch. 342, § 8 and ch. 368, § 2, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment by ch. 342, § 8, in subsection (1), inserted "or independent public body corporate and politic" preceding "pertaining to that person"; in subsection (2), inserted "or independent public body corporate and politic" preceding "shall either"; in subdivision (2)(b), substituted "attorney's" for "attorney"; and in subsection (3) (now subdivision (3)(a)), inserted "or independent public body corporate and politic" preceding "if the investigation is ongoing".

The 2000 amendment by ch. 368, § 2, in the last sentence of subdivision (2)(b), substituted "attorney's" for "attorney"; divided subdivision (3) into the introductory language of subdivision (3) and subdivisions (3)(a)

through (3)(d); in present subdivision (3)(d), added "or court rule" following "disclosure by statute", added subdivision (3)(e); and made minor stylistic and punctuation changes.

Sections 1 and 3 of S.L. 2000, ch. 368 are compiled as §§ 9-337 and 20-223, respectively.

Section 1 of S.L. 2001, ch. 48 is compiled as § 9-340B.

**Sec. to sec. ref.** This section is referred to in §§ 9-338, 20-511 and 20-516.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Cited in:** *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

#### ANALYSIS

Applicability.

Construction.

**Applicability.**

Idaho Code § 9-335 controls over provisions, such as Idaho Code § 9-342(1), that might otherwise provide for disclosure of investigatory records. *Gibson v. Ada County*, 138 Idaho 787, 69 P.3d 1048 (2003).

by excluding "otherwise exempt investigatory records if the investigation is ongoing," which implicitly defers to the exemption contained in § 9-340B; § 9-340B, in turn, defers to § 9-335 for a more specific definition of the investigatory records exemption. *Bolger v. Lance*, 137 Idaho 792, 53 P.3d 1211 (2002).

**Construction.**

Subsection (3) of this section limits the applicability of subsection (1) of this section

**9-342A. Access to air quality and hazardous waste records — Protection of trade secrets.** — (1) To the extent required by the federal clean air act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under chapter 3, title 9, Idaho Code, any person may inspect and copy:

- (a) Air pollution emission data;
- (b) The content of any title V operating permit;
- (c) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and
- (d) Any other record required to be provided to or obtained by the department of environmental quality pursuant to the federal clean air act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of environmental quality:

- (a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;
- (b) As determined necessary by the director of the department of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;
- (c) As required by state or federal law, including section 9-343(3), Idaho Code, under a continuing claim of confidentiality and subsection (1), of this section; or
- (d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of environmental quality to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 9-339(1), Idaho Code, when a request is made to the department of environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the director of the department of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information the department of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the department of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the director of the department of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the director of the department of environmental quality shall notify the person requesting the information that the request is denied pursuant to sections 9-339(3) and (4), Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the director of the department of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action directly appealable, de novo, to the district court of the county where the records or some part thereof are located. An appeal contesting the decision of the director of the department of environmental quality to release information claimed to be a trade secret shall be filed within ten (10) working days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the director of the department of environmental quality to provide records was frivolously pursued.

(8) The department of environmental quality shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of environmental quality, or to agents, contractors, or other representatives of the department, the immunity created in section 9-346, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section. [I.C., § 9-342A, as added by 1998, ch. 125, § 1, p. 461; am. 2001, ch. 103, § 2, p. 253.]

**Compiler's notes.** The Federal Clean Air Act, which is referred to in subsection (1), is codified at 42 U.S.C.S. § 7401 et seq. The Resource Conservation and Recovery Act, which is also referred to in subsection (1), is codified at 42 U.S.C. 6901 et seq.

The words enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 1998, ch. 125 is compiled as § 39-111.

Sections 1 and 3 of S.L. 2001, ch. 103 are compiled as §§ 9-340F and 18-6015, respectively.

Section 5 of S.L. 1998, ch. 125 declared an emergency. Effective March 19, 1998.

**Sec. to sec. ref.** This section is referred to in § 39-7914.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-343. Proceedings to enforce right to examine or to receive a copy of records — Retention of disputed records.** — (1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency or independent public body corporate and politic. The time for responsive pleadings and for hearings in such proceedings shall be set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency or independent public body corporate and politic shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding. [I.C., § 9-343, as added by 1990, ch. 213, § 1, p. 480; am. 1992, ch. 200, § 3, p. 618; am. 2000, ch. 342, § 9, p. 1146; am. 2001, ch. 101, § 1, p. 251.]

**Compiler's notes.** Section 10 of S.L. 2000, ch. 342 is compiled as § 9-346.

**Sec. to sec. ref.** This section is referred to in §§ 9-342, 9-342A and 67-3008.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Opinions of Attorney General.** Refusal to provide records or documents on the grounds that such records or documents are exempt from disclosure pursuant to the Idaho

Public Records Act does not constitute reasonable cause or legal excuse for failing to comply with the Department of Health and Welfare's administrative subpoena. OAG 95-6.

Public records that are exempt from public disclosure are nevertheless subject to disclosure in a judicial or administrative proceeding if they are subject to disclosure under the laws or rules of evidence and discovery governing those proceedings. OAG 95-6.

#### **9-344. Order of the court — Court costs and attorney fees. —**

(1) Whenever it appears that certain public records are being improperly withheld from a member of the public, the court shall order the public official charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the pleadings filed by the parties and such oral arguments and additional evidence as the court may allow. The court may examine the record in camera in its discretion.

(2) If the court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the requested disclosure. If the court determines that the public official was justified in refusing to make the requested record available, he shall return the item to the public official without disclosing its content and shall enter an order supporting the decision refusing disclosure. In any such action, the court shall award reasonable costs and attorney fees to the prevailing party or parties, if it finds that the request or refusal to provide records was frivolously pursued. [I.C., § 9-344, as added by 1990, ch. 213, § 1, p. 480.]

**Sec. to sec. ref.** This section is referred to in § 9-342.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Cited in:** Bolger v. Lance, 137 Idaho 792, 53 P.3d 1211 (2002).

**9-345. Additional penalty. —** If the court finds that a public official has deliberately and in bad faith improperly refused a legitimate request for inspection or copying, a civil penalty shall be assessed against the public official in an amount not to exceed one thousand dollars (\$1,000), which shall be paid into the general account. [I.C., § 9-345, as added by 1990, ch. 213, § 1, p. 480.]

**Sec. to sec. ref.** Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-346. Immunity. —** No public agency or independent public body corporate and politic, public official, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record governed by the provisions of this chapter if the public agency or independent public body corporate and politic, public official or custodian acted in good faith in attempting to comply with the provisions of this chapter. [I.C., § 9-346, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 10, p. 1146.]

**Compiler's notes.** Section 9 of S.L. 2000, ch. 342 is compiled as § 9-343.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**Sec. to sec. ref.** This section is referred to in § 9-342A

**9-347. Agency guidelines.** — By January 1, 1991, every state agency or independent public body corporate and politic shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the state agency or independent public body corporate and politic, the custodian, and the physical location of such documents. [I.C., § 9-347, as added by 1990, ch. 213, § 1, p. 480; am. 2000, ch. 342, § 11, p. 1146.]

**Sec. to sec. ref.** Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-348. Prohibition on distribution or sale of mailing or telephone number lists — Penalty.** — (1) Except as provided in subsections (2), (3), (4), (5), (6), (7), (8) and (9) of this section, in order to protect the privacy of those who deal with public agencies or an independent public body corporate and politic:

(a) No agency or independent public body corporate and politic may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list; and

(b) No list of persons prepared by the agency or independent public body corporate and politic may be used as a mailing list or a telephone number list except by the agency or independent public body corporate and politic or another agency without first securing the permission of those on the list.

(2) Except as may be otherwise provided in this chapter, this section does not prevent an individual from compiling a mailing list or a telephone number list by examination or copying of public records, original documents or applications which are otherwise open to public inspection.

(3) The provisions of this section do not apply to the lists of registered electors compiled pursuant to title 34, Idaho Code, or to lists of the names of employees governed by chapter 53, title 67, Idaho Code.

(4) The provisions of this section shall not apply to agencies which issue occupational or professional licenses.

(5) This section does not apply to the right of access either by Idaho law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(6) This section does not apply to a corporate information list developed by the office of the secretary of state containing the name, address, registered agent, officers and directors of corporations authorized to do business in this state or to a business information list developed by the department of commerce containing the name, address, telephone number or other relevant information of Idaho businesses or individuals requesting information regarding the state of Idaho or to business lists developed by the department of agriculture, division of marketing and development, used to promote food and agricultural products produced in Idaho.

(7) This section does not apply to lists to be used for ordinary utility purposes which are requested by a person who supplies utility services in this state. Ordinary utility purposes, as used in this chapter only, do not include marketing or marketing research.

(8) This section does not apply to lists to be used to give notice required by any statute, ordinance, rule, law or by any governing agency.

(9) This section does not apply to student directory information provided by colleges, universities, secondary schools and school districts to military recruiters for military recruiting purposes pursuant to the requirements of federal laws.

(10) If a court finds that a person or public official has deliberately and in bad faith violated the provisions of subsection (1)(b) of this section, the person or public official shall be liable for a civil penalty assessed by the court in an amount not in excess of one thousand dollars (\$1,000) which shall be paid into the general account. [I.C., § 9-348, as added by 1992, ch. 279, § 1, p. 856; am. 1993, ch. 117, § 1, p. 294; am. 1994, ch. 398, § 1, p. 1261; am. 1997, ch. 152, § 2, p. 432; am. 2000, ch. 342, § 12, p. 1146; am. 2003, ch. 310, § 1, p. 851.]

**Compiler's notes.** Former § 9-348 was amended and redesignated as § 9-349 by § 2 of S.L. 1992, ch. 279.

Section 1 of S.L. 1997, ch. 152 is compiled as § 9-338.

Section 13 of S.L. 2000, ch. 342 is compiled as § 67-5241.

**Sec. to sec. ref.** This section is referred to in §§ 9-338 and 9-343.

Sections 9-335 through 9-348 are referred to in § 63-3077.

**9-349. Confidentiality language required in this chapter.** — On and after January 1, 1996, any statute which is added to the Idaho Code and provides for the confidentiality or closure of any public record or class of public records shall be placed in this chapter. Any statute which is added to the Idaho Code on and after January 1, 1996, and which provides for confidentiality or closure of a public record or class of public records and is located at a place other than this chapter shall be null, void and of no force and effect regarding the confidentiality or closure of the public record and such public record shall be open and available to the public for inspection as provided in this chapter. [I.C., § 9-349, as added by 1996, ch. 122, § 1, p. 437.]

**[9-349A] 9-350. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 9-348, as added by 1990, ch. 213, § 1, p. 480; am. and redesign. 1992, ch. 279, § 2, p. 856; am. and redesign. 1996, ch. 122, § 2, p. 437.]

**Compiler's notes.** This section which was originally compiled as § 9-348 and was amended and redesignated as § 9-350 by § 2 of S.L. 1992, ch. 279, was subsequently redesignated as § 9-350 by § 2 of S.L. 1996, ch. 122. However, since there was already a § 9-350 in existence, the bracketed designation "[9-349A]" has been inserted by the compiler.

ignated as § 9-350 by § 2 of S.L. 1996, ch. 122. However, since there was already a § 9-350 in existence, the bracketed designation "[9-349A]" has been inserted by the compiler.



Section 2 of S.L. 1990, ch. 213 repealed §§ 9-301, 9-302, and 59-1009, and § 3 of S.L. 1990, ch. 213 is compiled as § 1-2103.

Section 111 of S.L. 1990, ch. 213 provided that §§ 1 and 2 of the act should take effect July 1, 1990.

Section 2 of S.L. 1993, ch. 389 declared an

emergency. Approved April 1, 1993.

Section 3 of S.L. 1996, ch. 122 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval and retroactive to January 1, 1996. Approved January 1, 1996.

**9-350. Idaho Code is property of the state of Idaho.** — (1) The Idaho Code is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a copyright on the Idaho Code. If a person reproduces or distributes the Idaho Code for the purpose of direct or indirect commercial advantage, the person shall owe to the Idaho code commission, as the agent of the state of Idaho, a royalty fee in addition to the fee charged for copying the Idaho Code. Any person who reproduces or distributes the Idaho Code in violation of the provisions of this section, shall be deemed to be an infringer of the state of Idaho's copyright. The Idaho code commission, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the Idaho code commission or its designated agent has custody of the Idaho Code.

(2) A court having jurisdiction of a civil action arising under this section may grant such relief as it deems appropriate. At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of all copies claimed to have been made or used in violation of the Idaho code commission's copyright pursuant to this section.

(3) An infringer of the state of Idaho's copyright pursuant to this section is liable for any profits the infringer has incurred by obtaining the Idaho Code for commercial purposes or is liable for statutory damages as provided in subsection (4) of this section.

(4) The Idaho code commission, as agent of the copyright owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to the Idaho Code for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as the court considers just.

(5) In any civil action under this section, the court may allow the recovery of full costs by or against any party and may also award reasonable attorney's fees to the prevailing party as part of the costs.

(6) The Idaho code commission is hereby authorized to license and charge fees for the use of the Idaho Code. The Idaho code commission may grant a license for the use of the Idaho Code to a public agency in the state and waive all or a portion of the fees. All fees recovered by the Idaho code commission shall be deposited in the general account. [I.C., § 9-350, as added by 1993, ch. 389, § 1, p. 1444.]